

**Environmental Law & Policy Center
Environment Michigan ♦ Michigan Environmental Council
Michigan League of Conservation Voters
Natural Resources Defense Council
Upper Peninsula Environmental Coalition**

June 1, 2026

Submitted via Email

Reviewing Officer
Attn: PAL-LSC Objections
U.S. Forest Service, Eastern Region
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Milwaukee, Wisconsin 53202
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Trevor Hahka, District Ranger
U.S. Forest Service
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Re: Objections to the Environmental Assessment and Draft Decision Notice for
the Ottawa National Forest's Silver Branch Vegetation Management Project

Dear District Ranger Hahka and the Reviewing Officer:

The U.S. Forest Service is trying to have it both ways. With the proposed Silver Branch Vegetation Management Project, the agency is attempting to authorize an unprecedented amount of logging within the Ottawa National Forest—logging that would transform nearly 80,000 acres of cherished public land over a thirty-year period.¹ As the Ottawa's own record makes clear, this activity cannot

¹ Ottawa National Forest, Silver Branch Vegetation Management Project: Draft Decision Notice (Apr. 2026) ("Draft Silver Branch Decision"), at 7–8 (summarizing numerous "data errors" in the environmental assessment and providing corrected acreage counts).

occur without significant and adverse environmental impacts.² The Forest Service, however, has insisted on declaring otherwise—in an effort to skirt the requirements of federal law. According to the agency’s environmental assessment and draft decision, large swathes of the Ottawa can somehow be subjected to clearcuts, “selection harvest,” and other forms of logging without significant environmental effects, eliminating any need to evaluate the project in a thorough environmental impact statement.³

This approach is arbitrary and unlawful. Before moving forward, the agency must acknowledge and evaluate the reasonably foreseeable significant effects of its proposal—and more environmentally protective alternatives—in an EIS. The Forest Service’s persistent refusal to undertake such a review is irreconcilable with the fundamental requirements of the National Environmental Policy Act—not to mention good public policy.

The legal deficiencies of the Forest Service’s planned action aren’t limited to NEPA. In proposing logging on large portions of the Ottawa that have been designated as “not suitable” for timber harvest, the agency has defied the National Forest Management Act and its own regulations. And in failing to undertake formal consultation regarding the Silver Branch project’s potential impacts on the region’s endangered wolves, the agency has violated the Endangered Species Act.

All of these problems were detailed in the lengthy comments submitted by the Environmental Law & Policy Center, Environment Michigan, Michigan Environmental Council, Michigan League of Conservation Voters, Natural Resources Defense Council, and the Upper Peninsula Environmental Coalition.⁴ None of them have been remedied in the Forest Service’s draft decision and response to comments. Instead, the agency has attempted to defend the Silver Branch project with a series of conclusory assertions that disregard governing law, relevant science, and the Forest Service’s own record. This cannot be allowed. With these objections, we accordingly ask the agency to withhold its final decision on the Silver Branch project; to prepare an environmental impact statement that thoroughly considers the effects of the project and more protective alternatives; to limit any authorized logging in a manner that complies with the Endangered Species Act, the National Forest Management Act, and the Ottawa’s own forest

² See Environmental Law & Policy Center, *et al.*, Comments on the EA and FONSI for the Ottawa National Forest’s Silver Branch Vegetation Management Project (Jan. 22, 2026) (“Coalition Comments”).

³ Ottawa National Forest, Silver Branch Vegetation Management Project: Revised Environmental Assessment and Finding of No Significant Impact (Apr. 2026) (“Revised Silver Branch EA”), at 53–59; Draft Silver Branch Decision at 5.

⁴ Coalition Comments at 1–31.

plan; and to ensure that the forest's vital resources are adequately protected for this and future generations.⁵

I. The Silver Branch project's extraordinary scale and reasonably foreseeable significant effects must be thoroughly considered by the Forest Service in an environmental impact statement.

The inadequacies of the Forest Service's environmental assessment and draft decision confirm the vital importance of thorough reviews under the National Environmental Policy Act. Under the statute, again, agencies cannot take "major Federal actions significantly affecting the quality of the human environment" without first preparing "a *detailed statement*" that addresses five fundamental issues:

- (i) [the] *reasonably foreseeable environmental effects* of the proposed agency action;
- (ii) any *reasonably foreseeable adverse environmental effects which cannot be avoided* should the proposal be implemented;
- (iii) a *reasonable range of alternatives* to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;
- (iv) the *relationship* between local *short-term uses* of man's environment and the maintenance and enhancement of *long-term productivity*; and

⁵ The Environmental Law & Policy Center drafted these objections and is serving as the lead objector. See 36 C.F.R. § 218.8(d)(3). These objections also follow the structure (and section headings) of our previously submitted comments in order to clarify "the connection between [our] prior specific written comments on the ... proposed project ... and the content of the objection[.]" *Id.* § 218.8(d)(6).

- (v) any *irreversible and irretrievable commitments* of Federal resources which would be involved in the proposed agency action should it be implemented.⁶

Congress recently reaffirmed these requirements. With the Fiscal Responsibility Act of 2023, each federal agency was reminded of its obligation to “issue an *environmental impact statement* with respect to a proposed agency action requiring an environmental document that has a *reasonably foreseeable significant effect* on the quality of the human environment.”⁷ Environmental assessments, in other words, are only sufficient when “a proposed agency action ... does not have a reasonably foreseeable significant effect on the quality of the human environment[.]”⁸

The Forest Service has defied these requirements in refusing to prepare an environmental impact statement that thoroughly considers the implications of the Silver Branch project and a reasonable range of alternatives. It must remedy this failure now.

A. The Forest Service’s environmental assessment and draft decision arbitrarily fail to acknowledge and apply the relevant definitions of “reasonably foreseeable significant effects.”

In our comments, we noted that “while the purpose of the Forest Service’s assessment was to determine whether the Silver Branch project would have a ‘reasonably foreseeable significant effect’ on the environment, the document doesn’t fully quote—much less define—this statutory standard.”⁹ We also pointed the agency to its own Handbook, which echoed the Council on Environmental Quality’s NEPA regulations by requiring the Ottawa’s assessment “to evaluate and ‘describe

⁶ 42 U.S.C. § 4332(2)(C) (emphasis added). *See also id.* § 4332(2)(H) (directing every federal agency to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources”).

⁷ *Id.* § 4336(b)(1) (emphasis added).

⁸ *Id.* § 4336(b)(2).

⁹ Coalition Comments at 5 (quoting 42 U.S.C. § 4336(b)(1)–(2)); Revised Silver Branch EA at 53 (concluding that the project “would not have a significant effect on the human environment” without defining “significant”—and without mentioning “reasonable foreseeability” at all).

the impacts of ... [the] proposed action and any alternatives in terms of *context* and *intensity*[.]”¹⁰

The “context” requirement, again, “means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality.”¹¹ Significance accordingly “varies with the setting of the proposed action.”¹² “[I]n the case of a site-specific action”—like the Silver Branch project—“significance would usually depend upon the effects in the locale rather than in the world as a whole.”¹³ And in all cases, “[b]oth short- and long-term effects are relevant.”¹⁴

“Intensity,” in contrast, “refers to the severity of impact.”¹⁵ The Handbook set out multiple factors that had to be considered by the agency in evaluating the intensity of the Silver Branch project:

- (1) Impacts that may be *both beneficial and adverse*. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
- (2) The degree to which the proposed action affects *public health or safety*.
- (3) *Unique characteristics of the geographic area* such as proximity to historic or cultural resources, park lands,

¹⁰ Coalition Comments at 5 (quoting Forest Service Handbook 1909.15 § 41.23 (emphasis added)). *See also* Revised Silver Branch EA at 35 (referencing Forest Service Handbook 1909.15 without mentioning its relevant definitions and requirements); 40 C.F.R. § 1501.3(d) (July 1, 2024) (directing federal agencies to “examine both the context of the action and the intensity of the effect” when “considering whether an adverse effect of the proposed action is significant”).

¹¹ Coalition Comments at 5 (quoting Forest Service Handbook 1909.15 § 05). *See also* 40 C.F.R. § 1501.3(d)(1) (July 1, 2024) (providing that an agency’s “context” analysis “should consider the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns[,]” and, “[d]epending on the scope of the action, agencies should consider the potential global, national, regional, and local contexts as well as the duration, including short-and long-term effects”).

¹² Coalition Comments at 5 (quoting Forest Service Handbook 1909.15 § 05).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 6 (quoting Forest Service Handbook 1909.15 § 05).

prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

- (4) The degree to which the effects on the quality of the human environment are likely to be *highly controversial*.
- (5) The degree to which the possible effects on the human environment are *highly uncertain* or involve *unique or unknown risks*.
- (6) The degree to which the *action may establish a precedent* for future actions with significant effects or represents a decision in principle about a future consideration.
- (7) Whether the action is related to other actions with individually insignificant but *cumulatively significant impacts*. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of *significant scientific, cultural, or historical resources*.
- (9) The degree to which the action may adversely affect an *endangered or threatened species* or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- (10) [And] [w]hether the action threatens a *violation of Federal, State, or local law* or requirements imposed for the protection of the environment.¹⁶

¹⁶ *Id.* at 6–7. See also 40 C.F.R. § 1501.3(d)(2) (July 1, 2024) (providing that “[a]gencies shall analyze the intensity of effects” in light of a similar set of factors); 7 C.F.R. § 1b.2(f)(3) (providing that agencies must “consider and analyze” both the “potentially affected environment” and the “degree of the effects of the action” when making a significance determination).

In its environmental assessment, again, the Forest Service arbitrarily failed to mention—much less apply—these standards.¹⁷ And the agency has done nothing to remedy the problem in responding to the public’s comments. Rather than acknowledging NEPA’s “reasonably foreseeable significant effects” requirement and attempting to apply it to the Silver Branch proposal, the agency has insisted—in an inscrutable way—that the relevant standards have already been applied in its EA or are somehow inapplicable.¹⁸ These arguments fail.

First, there’s no merit to the Forest Service’s suggestion that the environmental assessment’s significance findings were based on the relevant legal requirements. According to the agency’s response, “[t]he project’s analysis was conducted using the implementing regulations for NEPA at 40 CFR 1501.3 as allowed because it was initiated prior to the release of the current USDA Implementing regulations at 7 CFR 1b (Final Rule 4/3/2026).”¹⁹ But Section 1501.3—which was referenced in a single aside within the agency’s EA—only confirmed that agencies “shall examine both the context of the action and the intensity of the effect” in determining “whether an adverse effect of the proposed action is significant[.]”²⁰ And with respect to intensity, the regulation required every agency to consider a proposal’s “direct, indirect, ... [and] cumulative” impacts in light of an almost identical set of factors:

- (i) The degree to which the action may adversely affect *public health and safety*.
- (ii) The degree to which the action may adversely affect *unique characteristics of the geographic area* such as historic or cultural resources, parks, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

¹⁷ See Coalition Comments at 3–7.

¹⁸ Ottawa National Forest, Silver Branch Vegetation Management Project: Response to Comments on Environmental Assessment (Apr. 2026) (“Response to Comments”), at 28.

¹⁹ *Id.*

²⁰ 40 C.F.R. § 1501.3(d) (July 1, 2024); Revised Silver Branch EA at 53 (noting that a “Finding of No Significant Impact documents the reasons why an action, not otherwise excluded from documentation in an environmental assessment (EA) or environmental impact statement (EIS) in accordance with 40 CFR §1501.3, would not have a significant effect on the human environment and for which an environmental impact statement therefore would not be prepared”).

- (iii) Whether the action may violate relevant Federal, State, Tribal, or local *laws* or other requirements or be inconsistent with Federal, State, Tribal, or local *policies designed for the protection of the environment*.
- (iv) The degree to which the potential effects on the human environment are *highly uncertain*.
- (v) The degree to which the action may adversely affect resources listed or eligible for listing in the *National Register of Historic Places*.
- (vi) The degree to which the action may adversely affect an *endangered or threatened species* or its habitat, including habitat that has been determined to be critical under the Endangered Species Act of 1973.
- (vii) The degree to which the action may adversely affect *communities with environmental justice concerns*.
- (viii) The degree to which the action may adversely affect *rights of Tribal Nations* that have been reserved through treaties, statutes, or Executive Orders.²¹

It is this analysis that’s missing—arbitrarily and unlawfully—from the Ottawa’s assessment.²²

Second, the Forest Service’s effort to ignore its own Handbook does no better. According to the agency’s response, “[t]he Forest Service Handbook was not updated to reflect the Biden Administration’s Phase II changes to update NEPA implementing regulations at 40 CFR 1501.3 in July 2023”—an apparent justification, it seems, for ignoring the Handbook altogether.²³ The relevant section of the Handbook, however—1909.15—was updated by the Forest Service’s current chief, Tom Schultz, on June 30, 2025.²⁴ While Regional Forester Jacqueline Buchanan recently “[r]emove[d] the entire FSH 1909.15, National Environmental Policy Act Handbook, from the Directive System[,]” the relevant provisions were in place—and binding—during the preparation of the Silver Branch assessment.²⁵ The

²¹ 40 C.F.R. §§ 1501.3(d)(2); 1508.1(i)(1)–(4) (July 1, 2024) (emphasis added).

²² See Coalition Comments at 3–7.

²³ Response to Comments at 28.

²⁴ Forest Service Handbook 1909.15 (effective July 23, 2025).

²⁵ Forest Service Handbook Amendment 1909.15-2026-1 (effective March 26, 2026).

Forest Service’s decision to ignore and defy them was accordingly arbitrary and unlawful.

Finally, the Forest Service is simply wrong in suggesting that it ultimately fulfilled its “significance” obligations by evaluating the Silver Branch proposal’s “short- and long-term effects, beneficial and adverse effects, effects on public health and safety and effects on other applicable laws[.]”²⁶ As we explained in our comments and reiterate again below, the assessment’s discussion of the project’s effects was inadequate—and accordingly arbitrary—in numerous respects.²⁷ And as betrayed by the agency’s own summary of its analysis, the Forest Service entirely ignored a number of the factors it was required to consider in making a significance determination, including “[t]he degree to which the effects on the quality of the human environment are likely to be *highly controversial*”; “[t]he degree to which the possible effects on the human environment are *highly uncertain* or involve unique or unknown risks”; “[t]he degree to which the action may establish a *precedent* for future actions with significant effects or represents a decision in principle about a future consideration”; and, most importantly, “[w]hether the action is related to other actions with individually insignificant but *cumulatively significant impacts*.”²⁸

To remedy these failures, the Forest Service must reconsider its arbitrary finding of no significant impact in light of all legally relevant factors. When it does so, it will be left to conclude that the Silver Branch project is environmentally significant, requiring thorough consideration in an environmental impact statement.

B. The Forest Service’s plan to authorize logging across 79,830 acres of the Ottawa will have clear and significant effects that must be analyzed in an EIS.

In our comments, we noted that “[t]he Forest Service’s finding of no significant impact is impossible to reconcile with the extraordinary scale of the Silver Branch project[.]” which is slated to “includ[e] more than 25,000 acres of ‘clearcuts’ and close to 50,000 acres of ‘selection harvest.’”²⁹ We also noted that the finding is “at odds with the Ottawa’s previous determinations that much smaller

²⁶ Response to Comments at 28.

²⁷ Coalition Comments at 7–25.

²⁸ Forest Service Handbook 1909.15 § 05 (emphasis added).

²⁹ Coalition Comments at 7–9.

projects”—amounting to only 3,360 acres and 17,700 acres—“required careful consideration in environmental impact statements.”³⁰

The Forest Service’s responses have done nothing to address these issues. While the agency has suggested that the project’s maps make it look larger than it really is—by “display[ing] entire forest stands”—this has no bearing on the fact that nearly 80,000 acres of public land would be subject to clearcuts, selection harvest, or other forms of logging if the proposal’s allowed to move forward.³¹ And tellingly, the Forest Service has failed to acknowledge—much less distinguish—its previous determinations that significantly smaller projects would have reasonably foreseeable significant effects that had to be evaluated in environmental impact statements.

To remedy this failure, the Forest Service must evaluate the Silver Branch project in a thorough environmental impact statement before issuing its final decision.

C. The Forest Service’s own characterizations of the Silver Branch project and its foreseeable effects demonstrate the need to prepare an environmental impact statement.

In our comments, we noted that while “the Forest Service has failed to offer a meaningful evaluation of the Silver Branch project’s effects, the agency’s own characterizations of the proposal confirm that they would prove significant”—something that’s “most evident in the Service’s statements regarding the action’s likely impacts on vegetation, wildlife, waters, and soil within the Ottawa.”³² The agency’s responses have only made the environmental significance of the Silver Branch project more clear.

Vegetation. In addressing the proposed project’s impacts on the Ottawa’s vegetation, the Forest Service has made little effort to argue that they won’t prove significant. Instead, the agency’s responses confirm that the proposed “timber harvest acreage is approximately 79,830 acres”—acres that “include clearcutting, thinning, group selection, shelterwood, and individual tree selection”; that much of the planned logging would prevent the forest from naturally “transition[ing] to

³⁰ *Id.* at 8–9 (citing U.S. Forest Service, Notice of Intent to Prepare an Environmental Impact Statement: Ottawa National Forest’s Plantation Lakes Project, 65 Fed. Reg. 34,139, 34,139–40 (May 26, 2000); U.S. Forest Service, Notice of Intent to Prepare an Environmental Impact Statement: Ottawa National Forest’s Baltimore Vegetative Management Project, 67 Fed. Reg. 45,076, 45,076–77 (July 8, 2002)).

³¹ Response to Comments at 28.

³² Coalition Comments at 9–12.

hardwoods” and, ultimately, old growth; that “the spread of invasive species is [already] having a significant impact on the environment of the Ottawa”; and that “the proposed timber harvest and road work would contribute to the spread of invasive plants.”³³ All of this makes the Forest Service’s finding of no significant impact an arbitrary non sequitur.

Wildlife. The Forest Service’s responses regarding the Silver Branch project’s wildlife impacts similarly confirm the need for an environmental impact statement. In them, the agency acknowledges that “implementation of timber management activities and other proposed actions may result in localized and temporary disturbances to Federally endangered species, Regional Forester’s Sensitive Species (RFSS), and other wildlife.”³⁴ While the Forest Service argues that “[t]hese impacts are expected to be limited in scope and duration and would not jeopardize the continued existence of these species[,]” this does not provide a reasonable basis for the agency’s finding of no significant impact.³⁵ As we noted in our comments, “NEPA requires the preparation of an environmental impact statement even when an action’s significant effects would not last forever[,]” given that “[b]oth short- and long-term effects are relevant’ in determining significance.”³⁶ And the claim that the project “would not *jeopardize* the continued existence” of any listed species is not enough to demonstrate that its adverse effects wouldn’t qualify as “*significant*” under NEPA.³⁷ Finally, the Forest Service’s reliance on “project design criteria, seasonal timing restrictions, and best management practices ... to avoid or minimize direct effects to individuals” ultimately begs the question of whether the project’s remaining impacts—direct and indirect—would prove environmentally “significant.”³⁸ In failing to offer a reasoned answer to this question, the agency acted arbitrarily and unlawfully.

The Forest Service’s arguments regarding migratory birds fare no better. According to the agency, “[t]he Proposed Action would abide by the direction contained in [Executive Order 13,186 and the Forest Service’s related Memorandum of Agreement] *to the extent practicable*”; “[n]o activities included in the Proposed Action would *intentionally* take migratory birds”; and “[a]lthough some of the actions may incidentally result in impacts to migratory birds, this project would

³³ Response to Comments at 35–36.

³⁴ *Id.* at 3.

³⁵ *Id.*

³⁶ Coalition Comments at 13–14 (quoting Forest Service Handbook 1909.15 § 05). *See also, e.g.*, 7 C.F.R. § 1b.2(f)(3)(ii) (noting that “[i]n considering the degree of effects,” agencies “should consider ... [b]oth short- and long-term effects”).

³⁷ Response to Comments at 3.

³⁸ *Id.*

avoid measurable negative effects at the *population level* of migratory bird species.”³⁹ Once again, however, all of this skirts the relevant question: Whether the Silver Branch project’s remaining impacts on birds would rise to the level of significance under NEPA. The Forest Service’s persistent refusal to address this question is arbitrary and unlawful.

Waters. In attempting to dismiss the aquatic impacts of the Silver Branch project as insignificant, the Forest Service’s responses repeatedly rely on their “relatively localized” nature.⁴⁰ While acknowledging, for instance, that “occurrences of inaccurate design criteria application may occur[,]” undermining the criteria’s effectiveness in protecting the Ottawa’s waters, the agency ultimately argues that such “instances have *relatively localized* potential impacts that do not constitute significant adverse effects to aquatic resources in the project area.”⁴¹ And with respect to the “unavoidable impacts that occur where road work intersects with aquatic habitat,” the agency insists that they would be “localized, short-term, [and] *relatively minor at the stream scale and project scale.*”⁴² The problem with these arguments, of course, is that they use the extraordinary scale of the Silver Branch proposal as a means of discounting effects that wouldn’t span the entire 177,772-acre project area.⁴³ The Forest Service’s analysis should have done the opposite by determining whether the combined effect of numerous localized harms across such a large portion of the forest would prove cumulatively significant.⁴⁴ Its failure to do so was arbitrary and unlawful.

Soil. In addressing the Silver Branch project’s soil impacts, the Forest Service’s responses seemed determined to confirm their significance. In the span of less than three pages, the agency acknowledges numerous effects on the Ottawa’s

³⁹ *Id.* at 3–4 (emphasis added).

⁴⁰ *Id.* at 11–12.

⁴¹ *Id.* at 11 (emphasis added).

⁴² *Id.* at 12 (emphasis added). *See also id.* (asserting that “[r]elative to the project area stream network, ... road-stream crossing actions represent highly localized perturbations, widely dispersed both spatially across the project area and temporally over the duration of project implementation”).

⁴³ Revised Silver Branch EA at 4 (noting that the project “includes approximately 177,772 acres, of which 127,828 acres are National Forest System lands”).

⁴⁴ *Cf.* Forest Service Handbook 1909.15 § 05 (effective July 23, 2025) (noting that actions can have “individually insignificant but cumulatively significant impacts”); 40 C.F.R. § 1508.1(i)(3) (July 1, 2024) (noting that “[c]umulative effects can result from actions with individually minor but collectively significant effects taking place over a period of time”).

soil that promise to be durable and sometimes “severe.”⁴⁵ According to the Forest Service:

- “Risk ratings indicate operability of moderate to well-suited, slight erosion hazards, but *severe rutting hazards* and *medium compaction susceptibility* across most treatment areas. Higher productivity sites with loamy soils are most susceptible to compaction impacts resulting in *reduced growth rates of trees*. Skid trails, landings, and fire lines are identified as the most damaging features, with potentially higher erosion potential and *deep compaction persisting for decades*.”⁴⁶
- “The SBVMP spans a *30-year implementation period*, with soil recovery potentially extending an additional *25 years beyond that*. This *long timeframe introduces challenges tied to changing weather patterns*, including more frequent intense rain events and shorter winter operating seasons.”⁴⁷
- “Investigations for estimated time for recovery of soil bulk density in surface horizons have ranged from approximately 1 to 18 years[.] Soil compaction at depth can take even longer. *Deep compaction out to 25 years is still a concern* at [long-term soil-productivity] sites in the Lake States, and lack of recovery prior to *additional harvest could compound existing negative impacts* on water retention, soil aeration, root growth, and microbial activity[.]”⁴⁸
- “[T]he *risk for rutting* in this project area is dominantly in the *severe and moderate* categories, compaction susceptibility is medium, and erosion risk is mostly slight. In accordance with the previously mentioned soil bulk density recovery rates of up to 18 years or longer, these areas *may not have had adequate time to recover* from heavy equipment impacts (i.e., compaction at depth) that could have occurred during previous entries. Other less visible *impacts may also be compounded*, as soil biological and physical properties may have been altered and would still be recovering.”⁴⁹
- And “[u]nder the SBVMP proposal, 14 additional acres adjacent to the existing Coontail and Hager Lake gravel pits would be removed from the

⁴⁵ Response to Comments at 18–20.

⁴⁶ *Id.* at 18 (emphasis added).

⁴⁷ *Id.* at 19 (emphasis added).

⁴⁸ *Id.* (emphasis added).

⁴⁹ *Id.* at 19–20 (emphasis added).

productive soil resource through pit expansion. This conversion represents a *permanent loss of soil* productivity in those areas, as the 14 acres lost would no longer support the previous forest types, nutrient cycling, or other soil functions important to forest health. Once converted, these *areas cannot be restored* to their original ecological function without considerable reclamation efforts, which are often costly and *only partially effective*.”⁵⁰

These statements leave one wondering how the Silver Branch project’s soil impacts could possibly be dismissed as insignificant. And tellingly, the Forest Service never attempts to offer a clear and reasoned answer to the question. While the agency suggests that “strict adherence to operational safeguards/project design criteria” could help in “[s]ustaining soil productivity[,]” this ignores the fact that design criteria haven’t been strictly adhered to in the past—an issue addressed in more detail below.⁵¹ The Forest Service’s soil analysis was accordingly arbitrary and unlawful.

Remedy. In order to remedy its failure to thoroughly assess the significant impacts of the Silver Branch project on the Ottawa’s vegetation, wildlife, waters, and soil, the Forest Service must withhold its final decision on the proposal and prepare an environmental impact statement that addresses the reasonably foreseeable impacts of the project and available alternatives.

D. The Forest Service’s efforts to dismiss the foreseeable impacts of the Silver Branch project as insignificant were arbitrary and unsupported.

In our comments, we explained how the Forest Service’s limited arguments in support of its finding of no significant impact were unsupported and arbitrary.⁵² The agency’s responses have done nothing to remedy these failures.

Short-term impacts. In addressing the environmental assessment’s repeated and incorrect suggestion that “environmental effects can be dismissed as insignificant whenever they might prove less than permanent[,]” the Forest Service has offered little more than a denial.⁵³ According to the agency, “[t]he EA and supporting document’s discussion of temporary effects does not equate temporary with insignificant.”⁵⁴ But this is incorrect. In the portion of the assessment that

⁵⁰ *Id.* at 20 (emphasis added).

⁵¹ *Id.* at 18; Section I.D, *infra*.

⁵² Coalition Comments at 13–18.

⁵³ *Id.* at 13.

⁵⁴ Response to Comments at 6.

attempts to justify the agency’s finding of no significant impact, the Forest Service repeatedly emphasizes the allegedly “temporary” or “short-term” nature of the project’s adverse effects—and stretches the term to include harms that would last up to ten years:

- With respect to wildlife, for instance, the assessment states that “[s]*hort-term effects* are the most immediate but also most *temporary effects* to individual animals. *Temporary displacement* due to noise and human presence is the most common *short-term effect* for almost all animal species. Displacement due to habitat alteration is also *temporary (0 – 10 years)* with length of displacement depending on the stand type and management, but forest regeneration is a driving factor for chosen actions thus these changes are intended to be *time-limited*. There is some *short-term risk for direct mortality* especially during periods when rearing young but these effects of potential individual or small group mortality does not threaten any population of animal species. The SBVMP project includes repeated entries for vegetation management including timber harvest and opening maintenance through 2026 to 2061. *Long-term effects* of these projects tend to be *beneficial* as it ensures that habitat continues to evolve through cyclic age classes and encourages dense stands of regeneration that provide foraging, nesting, denning and escape habitat.”⁵⁵
- With respect the Ottawa’s aquatic resources—“including aquatic life, riparian areas, wetlands, stream and lake habitat”—the assessment states that “most adverse impacts ... would be minor and resultant of *short-term* impacts during project implementation related to roads and recreation where actions occur in or near aquatic habitat features.”⁵⁶ While the assessment admits that “[r]oad development actions represent the activities with the most potential for impacts to aquatic resources[,]” it ultimately dismisses them based on their “short-term” nature. In the words of the document: “Road development actions in or near aquatic habitat results in unavoidable *short-term impacts* related to vegetation removal, stream channel disturbance, and construction induced bursts of sediment and turbid flow. There would be *long-term beneficial effects* from an overall reduction in roads located in wetlands, roads located near aquatic features, a reduction in road-stream crossings, and a reduction in

⁵⁵ Revised Silver Branch EA at 56 (emphasis added). *See also id.* at 58 (asserting that the project’s “[a]dverse effects are mostly temporary displacement of individuals although there is some risk for harming individual animals especially during seasons when young are most vulnerable”).

⁵⁶ *Id.* at 53 (emphasis added).

road-stream crossings which serve as barriers to aquatic organism passage.”⁵⁷

- With respect to recreation and scenic impacts, the assessment states that “[t]he results of harvesting along with the implementation of design criteria within the recreation sites would result in a *short-term effect* to certain recreation users. Snowmobile trails and non-motorized trails would likely experience *temporary reroutes*, however, these impacts would be lessened by working with interest groups to ensure that trail continuity, while modified, would remain. *Short term audio and visual impacts* would be expected. Audio impacts are limited to the time of active management. Visual impacts from harvest activities would be minimized through design criteria, would become less evident over time and are considered *short-term (less than 5 years)*. The *long-term effect* would result in larger and healthier forests and regeneration within the project area to enhance the recreational experience.”⁵⁸
- And with respect to soil, finally, the assessment states that “[o]verall, the project’s design criteria and BMPs are expected to mitigate adverse effects, ensuring that most soil impacts are *temporary*, localized, and recoverable.”⁵⁹

The problem with this approach, again, is that “[b]oth short- and long-term effects are relevant” in assessing significance.⁶⁰ To quote the Council on Environmental Quality regulations the Forest Service allegedly relied upon in preparing its assessment, “agencies should consider ... short- and long-term effects” in making their significance determinations.⁶¹ And to quote our earlier comments, “[t]he Forest Service’s persistent attempts to discount short-term (and other less-than-permanent) impacts were accordingly arbitrary.”⁶² In order to remedy this failure, the agency must revisit its assessment and acknowledge that even the short-term

⁵⁷ *Id.* at 53–54 (emphasis added). *See also id.* at 56 (noting that “short term adverse impacts are ... unavoidable during instream work associated with road-stream crossing maintenance, removal or reconstruction”).

⁵⁸ *Id.* at 55 (emphasis added).

⁵⁹ *Id.* at 57 (emphasis added).

⁶⁰ Forest Service Handbook 1909.15 § 05 (effective July 23, 2025).

⁶¹ 40 C.F.R. § 1501.3(d)(1). *See also* 7 C.F.R. § 1b.2(f)(3)(ii) (providing that “[i]n considering the degree of effects,” agencies “should consider ... [b]oth short- and long-term effects”).

⁶² Coalition Comments at 13–14.

impacts of the Silver Branch project will prove environmentally significant, requiring the preparation of an EIS.

Consistency with other laws. The Forest Service has offered nothing to shore up the assessment’s arbitrary insistence that “[c]onsistency with relevant laws, regulations, policies, and Ottawa Forest Plan direction” would somehow “ensure[] that the Proposed Action does not exceed thresholds for significance.”⁶³ Instead, the agency has simply asserted in its response that “the Forest Plan is consistent with applicable laws, regulations and policies,” and, as a result, “all proposals consistent with the Plan are also consistent with the overarching rules.”⁶⁴ This again skirts the relevant question: Whether the Silver Branch project would have reasonably foreseeable significant effects.⁶⁵ To remedy this issue, the Forest Service must revisit its finding of no significant impact and ultimately prepare an EIS.

Best management practices and design criteria. In our comments, we noted that the Forest Service’s environmental assessment “also places heavy reliance on the asserted protections of various ‘design criteria’ and ‘Best Management Practices’”—reliance that was ultimately unreasonable given the agency’s own evidence that such practices aren’t likely to be fully implemented.⁶⁶ As we explained:

the Ottawa’s “BMP monitoring” has “identified numerous cases in which design criteria were not fully implemented, and therefore, the project ... [would] have risk of adverse impacts.” “Mistakes and errors during application of design criteria have [also] occurred,” ... creating further “potential for effects ... beyond those anticipated with application of design criteria.” The agency’s failure to acknowledge and address these risks was arbitrary—as was its persistent reliance on questionable protections in reaching its finding of no significant impact.⁶⁷

⁶³ *Id.* at 14 (quoting Silver Branch EA at 35).

⁶⁴ Response to Comments at 29.

⁶⁵ Coalition Comments at 13–14.

⁶⁶ *Id.* at 14–16.

⁶⁷ *Id.* at 15–16 (quoting Ryan J. Beatty and Blaze Budd, Silver Branch VMP: Aquatics Effects Analysis (Oct. 31, 2025) (“Aquatic Effects Analysis”), at 44, 60).

In response, the Forest Service argues that design criteria and best management practices don't actually need to be fully implemented in order to prove effective. In the words of the agency:

Based on the BMP monitoring protocol, application of design criteria and BMPs rated as less than "Fully Implemented" can still result in determinations that the BMPs which were applied were still effective at protecting water, aquatic or riparian resources. This has been observed by aquatics staff during field BMP monitoring events, especially as it relates to ground-based timber harvest. This is also supported by the results of BMP monitoring for 2015-2020, summarized in Lesch 2021. For example, from 2015-2020, a total of 19 ground-based timber harvest operations were selected (predominately randomly) for BMP monitoring. BMP implementation monitoring results included seven operations rated Fully Implemented, 1 operation rated Mostly Implemented, and eleven operations rated as Marginally Implemented; however, effectiveness monitoring determined that eighteen of the nineteen operations were effective at protecting water, aquatic and riparian resources. Therefore, the deviations from prescribed BMPs were evidently not critical enough to result in an observed negative impact on aquatic resources. ... Furthermore, while not included or referred to directly in the EA or Aquatic Specialist Report, the results of BMP implementation and effectiveness monitoring for ground-based timber harvest, conducted 2021-2024 yielded similar results. Out of seven BMP monitoring efforts for timber actions, there were four "Marginal" implemented ratings, one "Mostly" implemented rating, and two "Fully" implemented ratings. However, all seven were determined to be effective at protecting water, aquatic and riparian resources.⁶⁸

The Forest Service's effort to discount the importance of the management practices it has emphasized throughout its environmental assessment is arbitrary for a number of reasons.

First, the argument disregards the agency's own recognition that "strict" and "consistent" application of design criteria and BMPs would sometimes be needed to

⁶⁸ Response to Comments at 32–33.

avoid significant and adverse effects.⁶⁹ In the environmental assessment’s discussion of potential soil impacts, for instance, the Forest Service concludes that “[t]he degree of soil impact from project activities would *depend heavily on the consistent application of the included project design criteria and Best Management Practices[,]*” as “repeated entries without sufficient recovery intervals could push soil impacts beyond tolerable bounds[,]” and “[p]ermanent losses from new roads, gravel pit expansion, and trail construction ... highlight the need for strict adherence to safeguards and careful oversight to sustain long-term soil productivity and ecosystem resilience.”⁷⁰ In light of these statements, it is clear the Forest Service arbitrarily relied on the full implementation of the project’s design criteria and best management practices as a basis for the agency’s finding of no significant impact.

Second, the Forest Service’s response itself confirms that monitoring has documented cases in which design criteria and best management practices have been less than fully implemented and less than fully effective.⁷¹

For example, for Road Stream Crossing Construction/ Reconstruction ... , eleven projects were monitored with three “Fully Implemented”, two “Mostly Implemented”, four “Marginally Implemented”, one “Not Implemented”, and one where No BMPs were included in project planning. ... The results of effectiveness monitoring for these eleven road stream crossing construction/reconstruction actions resulted in the majority being determined “Effective” at seven sites; one determined “Marginally Effective” and three found to be “Not Effective”.⁷²

The agency’s effort to discount this documented ineffectiveness in its environmental analysis was arbitrary.

Finally, in attempting to rely on the conclusions of “an internal summary of the results of BMP monitoring for aquatic resources”—Lesch 2021—the Forest Service has ignored the monitoring’s limitations.⁷³ According to the summary, “[a]lthough some [effectiveness-monitoring] protocols incorporate use of existing water quality monitoring data, if available, the protocols do not include direct

⁶⁹ Revised Silver Branch EA at 54, 57.

⁷⁰ *Id.*

⁷¹ Response to Comments at 33–34.

⁷² *Id.*

⁷³ *Id.* at 31.

monitoring of beneficial or designated uses of waterbodies.”⁷⁴ The Forest Service’s declarations of “effectiveness,” in other words, arbitrarily ignore at least one key question: Whether “beneficial or designated uses of waterbodies” have been impaired by inadequate or not-fully-implemented management practices. And in the absence of monitoring data, it appears they arbitrarily ignore water quality, too.

The significance factors the agency’s ignored. In our comments, we noted that “[t]he arbitrariness of the Ottawa’s environmental assessment is further confirmed by the many ‘significance’ factors it ignores”—including the “[u]nique characteristics of the ... [project] area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas”; “[t]he degree to which the effects on the quality of the human environment are likely to be *highly controversial*[,]’ ... a highly relevant factor given the opposition to logging within the Ottawa’s Sturgeon River Gorge Wilderness Area addition, old growth, mature stands, and other areas”; and the possibility (or likelihood) of “*cumulatively significant impacts*.”⁷⁵ With its response, the Forest Service has again ignored most of these factors, confirming the arbitrariness of its analysis and decision.⁷⁶

While the agency’s response includes three paragraphs regarding the project’s potential impacts on the Sturgeon River Gorge Wilderness Area, they fall well short of the requirements of both NEPA and the Wilderness Act.⁷⁷ According to the agency, while the “area was not evaluated for management actions because no management actions would occur within [the] wilderness boundary[,]” it “was analyzed for visual impacts due to the proximity” of the Silver Branch project.⁷⁸ The Forest Service offers no justification for arbitrarily limiting its analysis to visual effects, however.⁷⁹ And the Forest Service’s “Visuals” report does not actually appear to evaluate the proposal’s likely impacts on the wilderness area at all.⁸⁰ The agency’s responses ultimately confirm, however, that the project would have significant impacts on the public’s views from the wilderness area.⁸¹ In the words of

⁷⁴ Lesch 2021 at 2.

⁷⁵ Coalition Comments at 16–17 (quoting Forest Service Handbook 1909.15 § 05 (emphasis added)).

⁷⁶ Response to Comments at 16.

⁷⁷ See Coalition Comments at 16 (collecting cases).

⁷⁸ Response to Comments at 16.

⁷⁹ *Id.*

⁸⁰ See Austin Walworth, Silver Branch VMP: Visuals Report (Sep. 29, 2025) (making no reference to the Sturgeon River Gorge Wilderness Area).

⁸¹ Response to Comments at 16.

the document, “[t]he [Silver Branch project] *would authorize clearcuts and other methods of harvest at the edge* of the [Sturgeon River Gorge Wilderness Area]. Out of the 13 proposed stands that border [the area], 2 are clearcuts.”⁸²

In attempting to minimize the implications of authorizing clearcuts along the boundary of a congressionally protected wilderness area, the Forest Service argues that the “design criteria for partial retention ... [would be] applied to the ... clearcut harvest units[,]” which would be enough to ensure that there are “no impacts to [the Sturgeon River Gorge area’s] wilderness character[.]”⁸³ The relevant design criteria, however, are plainly inadequate to eliminate the inevitable impacts of clearcutting. Under them, logging companies would be asked to take modest measures aimed at making stumps and slash less visible from roads, lakes, rivers, and trails by “cut[ting] to a maximum stump height of 14 inches or less[,]” for instance, if “tree removal is visible from the waters’ edge[,]” or “remov[ing] [slash] from the 4-foot-wide trail corridor so that it can be maintained[.]”⁸⁴ None of these measures come close to ensuring that Silver Branch’s clearcuts wouldn’t be visible from the wilderness area they would abut. The Forest Service’s assertions to the contrary cannot be reasonably defended.

Remedy. All told, the Forest Service’s finding of no significant impact was arbitrary and unlawful in numerous respects. To remedy the problem, the agency must revisit the finding, consider all relevant factors, and ultimately acknowledge that the Silver Branch project would have reasonably foreseeable significant effects that have to be considered in an environmental impact statement.

II. The Forest Service’s EIS must address the many issues and impacts that were arbitrarily ignored in its environmental assessment.

In our comments, we noted that the Forest Service “will have a chance to address a number of additional issues that were arbitrarily ignored in its environmental assessment” when it prepares the required EIS—including climate change, regeneration, wildfire, wetlands, roads, old growth, and natural succession.⁸⁵ With its responses, the agency has again failed to offer the analysis NEPA requires on any of these issues.

⁸² *Id.* (emphasis added).

⁸³ *Id.*

⁸⁴ Silver Branch VMP-specific Design Criteria, Sections 4(c)–(e) (Silver Branch EA App. A); Forest-wide Design Criteria, Sections 8(e), (i)–(j) (Silver Branch EA App. A).

⁸⁵ Coalition Comments at 18–22.

Climate. In attempting to paper over its decision to ignore the climate implications of the Silver Branch project, the Forest Service has offered a series of arguments that do nothing, ultimately, to remedy the problem.

First, the agency suggests that it wasn't really required to consider climate change given that the proposed project is focused on other things. In the words of the agency:

The Forest Service manages national forests under a multiple-use mandate that requires balancing a wide range of benefits for current and future generations. Carbon stewardship is one component of this mandate, and our objective is to optimize carbon within the broader context of ecosystem integrity and climate adaptation. While carbon considerations are important, climate change mitigation is not the primary purpose of the [Silver Branch] project ... , nor is it the primary purpose of the agency. The [Silver Branch] EA [accordingly] does not provide independent estimates of the potential carbon sequestration in peatlands, mature forests or old growth forests.⁸⁶

Like so many of the Forest Service's arguments, this one confuses the agency's obligations and authorities under other laws with its independent duty to comply with NEPA. Even if the Forest Service believes that the Silver Branch project would be consistent with the National Forest Management Act, the Multiple-Use Sustained-Yield Act, or any other law, this in no way limits the agency's obligation to thoroughly evaluate the project's impacts on the environment—including our climate.⁸⁷ The agency's arguments to the contrary are accordingly arbitrary and unlawful.

Second, the Forest Service repeatedly attempts to suggest that a climate analysis was actually done—even if there's no evidence of it in the environmental assessment. The agency insists, for instance, that its interdisciplinary team “considered information from the ‘Forest Carbon Assessment for the Ottawa National Forest’ (USDA Forest Service, 2024) in the development of the project[,]” and that the team ultimately “relied[,]” somehow, “on the ‘Forest Carbon Assessment for the Ottawa National Forest’ (USDA Forest Service 2024).”⁸⁸ The agency also declares that the Silver Branch “project record”—which has not been made available to the public—somewhere “discloses that the interdisciplinary team

⁸⁶ Response to Comments at 48.

⁸⁷ See 42 U.S.C. § 4332(2)(C); Coalition Comments at 14.

⁸⁸ Response to Comments at 48.

participated in the [NIACS] Adaptation Workbook process and considered adaptation tactics ... prior to scoping, so that the [team] could incorporate ideas from the exercise into the project proposal.”⁸⁹ None of this supposed analysis, however, is set out in the agency’s inadequate assessment. And even in its response to comments, the Forest Service has failed to identify any specific measures that actually resulted from the interdisciplinary team’s alleged consideration and reliance. NEPA demands more.

Third, the Forest Service declares—without support—that the Silver Branch project “is expected to result in contributing to the increasing carbon stock on the Ottawa along with stewarding other facets of our agencies multiple use mission.”⁹⁰ But it also “acknowledges that some harvested material may ... go to bioenergy, resulting in carbon release.”⁹¹ What’s needed—and what’s arbitrarily missing from the agency’s assessment—is an analysis of net carbon impacts that weighs any potential increases in carbon sequestration against the carbon releases the Silver Branch project would inevitably cause.⁹²

Finally, the Forest Service’s offers a discussion of soil organic carbon—or “SOC”—that only confirms the need for a thorough carbon analysis in an environmental impact statement. According to the agency’s responses:

- “[T]opsoil SOC is vulnerable to harvest impacts, particularly related to carbon cycling, hydrologic process, and ecosystem productivity, especially on some sites (Nave, et al., 2021).”⁹³
- “Across all proposed treatments, 34% of the stands are vulnerable to SOC loss, with 23% being at risk for significant loss[.]”⁹⁴
- “Scarification and/or mechanical site preparation treatments are included in all timber harvest stands, and such treatments have been shown to reduce SOC (Jimenez Esquilin, et al., 2007), further amplifying effects from other proposed timber, fire or wildlife proposed activities.”⁹⁵

⁸⁹ *Id.* at 49.

⁹⁰ *Id.* at 48–49.

⁹¹ *Id.*

⁹² *See* Coalition Comments at 18.

⁹³ Response to Comments at 49.

⁹⁴ *Id.*

⁹⁵ *Id.*

- “Areas where fire is intentionally put in the landscape are vulnerable to changes in SOC[,]” and “[a]ll [Silver Branch] timber treatment stands include prescribed fire as a treatment[.]”⁹⁶
- “Wetlands, especially peatlands, store a disproportionate share of terrestrial carbon (Busse et al., 2019). The project proposes broadcast burning up to 2,321 acres of black spruce wetlands, which may include peatlands. ... [A]nd burning can release carbon and methane while affecting peatland health.”⁹⁷
- And, finally, while “[r]esearch indicates that single-entry harvests have less cumulative impact on SOC than multiple repeated entries (Nave et al., 2021)[,]” the “proposed activities include multiple heavy-equipment entries and scarification, as disclosed in the analysis. All the treatments proposed for this project include multiple ground-based heavy equipment entries and scarification.”⁹⁸

All told, the Silver Branch project’s impacts on soil organic carbon promise to be significant. The Forest Service is accordingly obligated to evaluate them in an environmental impact statement that considers meaningful ways of limiting the proposal’s climate effects.

Regeneration. In our comments, we noted that the Forest Service’s assessment “repeatedly relies on failures of natural regeneration ... to justify its prescription of unnatural logging” across the Ottawa while simultaneously “ignor[ing] the primary driver of these failures: excessive browsing by .. [an] excessive deer population” that would grow even larger as a result of the Silver Branch project.⁹⁹ The agency’s response arbitrarily denies the existence of this problem rather than addressing it.

First, the Forest Service contends that “it is difficult to state that the Ottawa, and especially the Silver Branch project area has an ‘excessive deer population, and that [the proposed] actions would significantly increase the deer populations.”¹⁰⁰ In

⁹⁶ *Id.*

⁹⁷ *Id.* at 50.

⁹⁸ *Id.*

⁹⁹ Coalition Comments at 18–19 (citing Silver Branch EA at 7–8, 11–12, 13, 16, 19–24, 56–57).

¹⁰⁰ Response to Comments at 5.

support of this argument, however, the agency cites to “Deer Management Unit” descriptions from Michigan’s Department of Natural Resources that confirm the existence of a browsing problem.¹⁰¹ Rather than declaring that the project area’s deer population is “low” in absolute terms, as the Forest Service suggests, the descriptions merely speak in relative terms—declaring that “fawn recruitment and over-winter survival ... tends to be low” in two of the three relevant units “*compared to other DMU’s in the U.P.*”¹⁰² And rather than declaring that the region’s deer population isn’t causing excessive browsing, the descriptions merely assert that “deer browse *has not impacted tree regeneration*” in areas “[o]*utside of the deer wintering complexes[,]*” or “DWCs.”¹⁰³ This is an acknowledgment, ultimately, of a significant problem. In the words of the Forest Service, “[a]bout 74,211 acres of DWC’s are currently documented within the project boundary.”¹⁰⁴ The fact that browsing’s impact on tree generation is limited to such an expansive area is no reassurance at all.

Second, and remarkably, the Forest Service’s response confirms that the Silver Branch project “may increase carrying capacity and fitness of local deer herds” within the project area—which would also increase the herds’ adverse impacts on tree regeneration.¹⁰⁵ The agency’s failure to evaluate the implications of this was arbitrary.

Third, while the Forest Service contends that “there are options to reduce the impact of herbivory in area[s] where it is necessary, such as bud caps or fences as examples[,]” there appears to be no requirement—in the agency’s design criteria or elsewhere—that such measures be utilized.¹⁰⁶ The agency’s attempt to rely on mitigations that aren’t actually included in the proposed project was further arbitrary.

Fourth, the Forest Service has entirely failed to address a key study on deer browsing and tree regeneration in the region—Lauren Bradshaw and Donald M. Waller’s “Impacts of White-tailed Deer on Regional Patterns of Forest Tree Recruitment”—which was included as an attachment to our comments.¹⁰⁷ This, too,

¹⁰¹ *See id.*

¹⁰² *Id.* (emphasis added).

¹⁰³ *Id.* (emphasis added).

¹⁰⁴ *Id.* at 10 (emphasis added).

¹⁰⁵ *Id.* at 6.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*; Coalition Comments Attachment 4.

was arbitrary and must be remedied in the agency's environmental impact statement.

Finally, in proposing an action that would create more habitat for the region's excessive deer population at the expense of other native species and habitat types, including mature and old-growth forest, the Forest Service has both ignored and defied its obligation to maintain the ecological integrity of the Ottawa National Forest. Under NFMA and its own rules, the Forest Service is required to "maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds" with an eye to "[s]ystem drivers, including dominant ecological processes, disturbance regimes, and stressors[.]"¹⁰⁸ The Silver Branch project would do the opposite, preventing tens of thousands of acres on the Ottawa from naturally maturing in order to benefit a deer population that is already too large and causing harm. This is arbitrary and unlawful.

Wildfire. In our comments, we noted that the Forest Service's inadequate assessment "also cites 'the risk of catastrophic damage from wildfire' as justification for the Silver Branch project" but "ultimately and arbitrarily concedes that the project could amplify this risk even further."¹⁰⁹ In response, the agency has reversed itself, contending that "[t]he Ottawa's proposed actions would not amplify the risk of catastrophic damage from wildfire" after all.¹¹⁰ According to the Forest Service:

Distinguishing between "crown fire" and "surface fire" is key to understanding the risks. Crown fires burn in the upper canopy of trees, spreading rapidly from tree to tree fueled by interconnected tree branches/foilage, producing extremely high temperatures and large flames, and are exacerbated by winds. Firefighters on the ground cannot directly attack a crown fire. Conversely, surface fires consume low-lying vegetation where windspeed is less than in the canopy above, generally burn at a lower intensity and shorter flame lengths (so less destructive to canopy), spread more slowly unless influenced by steep slope or drought, and are easier to control. Because crown-fire is the more-intense type of wildfire and most difficult to contain, it yields the most-catastrophic results. Logging slash can increase the spread potential of "surface fire", yet the canopy-thinning or removal reduces the risk of "crown

¹⁰⁸ 36 C.F.R. §§ 219.8(a)(1), 219.9(a)(1), 219.15; 16 U.S.C. § 1604(g)(3)(B).

¹⁰⁹ Coalition Comments at 19.

¹¹⁰ Response to Comments at 21.

fire”. Therefore, logging trades one type of fire risk for a different risk that can be more easily mitigated.¹¹¹

This story—which is offered without a single citation to supporting scientific evidence—ignores what the Forest Service’s environmental assessment acknowledged. In the words of the EA:

The [proposed] vegetation management activities would affect the hazardous fuels loads in several ways. They would reduce (or remove) the crown spacing and stand density. Ladder fuels may be somewhat reduced by the nature of logging operations and removal of trees. However, the logging processes would *increase the fuel loading on the forest floor* when unmerchantable limbs and branches are left after harvest. The unnatural load of hazardous fuels left on the forest floor can cause *increased wildfire intensity* and an *increased rate of fire spread*. Further, the opening of the canopy, while reducing crown-fire potential, increases the temperature of the forest floor and allows more wind movement which also dries out the forest floor. *In conifer stands, that surface-fuel increase may offset the canopy/ladder improvements, yielding no net improvement to the FRCC. This is especially true in conifer-mix stands where harvest slash adds to existing pest-damaged debris, leaving a stand significantly altered from its historical conditions.* Thus, an accompanying fuels reduction treatment (post-harvest) is proposed in these areas to make progress ... toward the Forest Plan goal of maintaining stands in FRCC I or FRCC II.¹¹²

As “[l]ong-lived conifer stands are present throughout much of the project area[.]” the Forest Service’s new attempt to rely on “canopy/ladder improvements” as the answer to its wildfire problem is arbitrary.¹¹³

Unsurprisingly, the Forest Service’s brief response regarding wildfire also ignores the large body of science that links logging operations like the Silver Branch project to an increase in wildfire risk. We referenced a number of the relevant studies in our comments and have submitted them with these objections.¹¹⁴ They

¹¹¹ *Id.*

¹¹² Revised Silver Branch EA at 57–58 (emphasis added).

¹¹³ *Id.* at 7, 57–58; Response to Comments at 21.

¹¹⁴ Coalition Comments Attachment 1.

must be considered by the agency and addressed in its environmental impact statement.

Wetlands. In our comments, we noted that the Forest Service has fallen short of its “obligation to ‘*avoid* actions within ... wetlands unless there are no practical alternatives[.]”¹¹⁵ The agency’s responses have failed to remedy this problem.

The Forest Service’s duty to avoid authorizing projects in wetlands is rooted in Executive Order 11,990, which provides that:

each agency, to the extent permitted by law, *shall avoid* undertaking or providing assistance for new *construction located in wetlands unless* the head of the agency finds (1) that *there is no practicable alternative* to such construction, and (2) that the *proposed action includes all practicable measures to minimize harm* to wetlands which may result from such use.¹¹⁶

While the Forest Service acknowledged this requirement in its environmental assessment, it ultimately disregarded its obligation to “find[] ... that there is no practicable alternative” to the Silver Branch project’s wetland impacts before proposing to allow them.¹¹⁷ Instead, the agency has attempted to rely on its asserted efforts to “minimize or avoid impacts to project area floodplains and wetlands” through the application of “design criteria, including riparian protection measures[.]”¹¹⁸ Under Executive Order 11,990, this isn’t enough.¹¹⁹ The Forest Service must accordingly consider the availability of “practicable alternative[s]” to its proposal’s wetland impacts when it prepares the required environmental impact statement.¹²⁰

Roads. In our comments, we noted that the Forest Service’s assessment “ultimately fails to offer a meaningful evaluation of the roads that would be

¹¹⁵ Coalition Comments at 20 (quoting Silver Branch EA at 51 (emphasis added) (citing Executive Order No. 11,990)).

¹¹⁶ Executive Order 11,990, Sec. 2(a) (emphasis added).

¹¹⁷ *See id.*

¹¹⁸ Revised Silver Branch EA at 51 (asserting that “[t]he Proposed Action is consistent with EOs 11988 and 11990 because the design criteria, including riparian protection measures, minimize or avoid impacts to project area floodplains and wetlands”).

¹¹⁹ Executive Order 11,990, Sec. 2(a).

¹²⁰ *Id.*

required under the proposed action, repeatedly declaring, for instance, that the location and impact of the project's temporary roads are "TBD."¹²¹ In response, the agency has simply asserted, again, that the location and impacts of Silver Branch's roads will be sorted out later—after the project has already been approved. According to the Forest Service:

Temporary road locations are only determined after harvest areas are finalized for a timber sale contract, often using an old road template that would be restored after use. They are utilized in situations where access is needed on a non-permanent basis such as in clearcut units that would not need access in the near future. These temporary roads typically avoid stream crossings, but if necessary to do so, a temporary culvert is installed, removed after use and rehabilitated when the timber sale contract is completed.¹²²

This is inadequate under NEPA—a statute that requires federal agencies to thoroughly consider the environmental implications of their actions before decisions are made.¹²³ A more thorough analysis must be included in the agency's EIS.

Gravel. In our comments, we noted that the Forest Service's environmental assessment "acknowledges that the Silver Branch project would authorize two gravel operations to 'permanently remove[] 14 acres from the productive soil base' of the Ottawa" while "mak[ing] no effort ... to evaluate the environmental implications of this loss—or the further impacts that would result from gravel-mining activities."¹²⁴ Once again, the agency's response has failed to remedy the problem.

According to the Forest Service, because "gravel pits are eventually closed and remediated[,] ... the 14 acres of pit expansion, followed by eventual restoration to native vegetation, would not have a significant impact on the environment."¹²⁵ In the following paragraph of its response, however, the agency concedes that remediation wouldn't actually be enough to eliminate the significant environmental effects of the proposed pits, "as their surfaces ... [would be] permanently altered and

¹²¹ Coalition Comments at 20–21 (quoting Silver Branch EA at 28).

¹²² Response to Comments at 42–43.

¹²³ See 42 U.S.C. § 4332(2)(C).

¹²⁴ Coalition Comments at 21 (quoting Silver Branch EA at 58).

¹²⁵ Response to Comments at 44.

[would] no longer contribute to forest productivity.”¹²⁶ “Under the Silver Branch project proposal,” the Forest Service explained:

[fourteen] additional acres adjacent to the existing Coontail and Hager Lake gravel pits would be removed from the productive soil resource through pit expansion. This conversion represents a *permanent loss of soil productivity* in those areas, as the 14 acres lost will alter vegetation growth, nutrient cycling, or other soil functions. Once converted, *these areas cannot be restored* to their original ecological function without considerable reclamation efforts, which are often *costly and only partially effective*. Once a pit is retired it is reclaimed and rehabilitated, for such uses as wildlife openings or pollinator habitat.¹²⁷

In order to comply with NEPA, the Forest Service must evaluate and disclose both the short- and long-term effects of the proposed gravel-pit expansions. And it must also address “the further impacts that would result from gravel-mining activities”—an issue raised in our comments and ignored in the agency’s response.¹²⁸

Old Growth. In our comments, we noted that the Forest Service’s assessment “makes no effort to discuss the potential implications of the Silver Branch project” on the Ottawa’s vital old-growth stands—“either directly, through activities authorized within the stands, or indirectly, due to activities authorized nearby.”¹²⁹ In response, the agency has confessed error, noting that “[a]n older data set was used which contained treatments that were not intended, [and] the revised proposal has no active management within old growth excluding the 129 acres proposed for prescribed fire.”¹³⁰ This revision does nothing, however, to eliminate the prospect of indirect effects on the forest’s old growth. While the Forest Service suggests it was somehow the public’s obligation to “specify what features within those old growth stands could be harmed by proposed actions nearby[.]” there is no basis in law for tasking commenters with fulfilling the agency’s NEPA obligations.¹³¹ And regardless, the Forest Service itself ultimately acknowledges the problem posed by “nearby” logging, noting that “there would be temporary edge

¹²⁶ *Id.*

¹²⁷ *Id.* at 44–45 (emphasis added).

¹²⁸ Coalition Comments at 21.

¹²⁹ *Id.*

¹³⁰ Response to Comments at 45.

¹³¹ *Id.*

effects when timber harvests occur next to old growth stands, such as increased sunlight to the old growth understory.”¹³² It’s not enough, of course, that the agency’s “[t]eam members were aware of such effects as they prepared their specialist reports[.]”¹³³ These effects have to be thoroughly evaluated and disclosed in an environmental impact statement before the Forest Service makes a final decision on the proposed project.¹³⁴

North Country Trail. In response to our comment regarding the need for an analysis of the proposed project’s effects on the North Country Trail and its users, the Forest Service insists that such an analysis was included in its environmental assessment and related reports.¹³⁵ A review of those documents confirms, however, that no actual analysis was provided.¹³⁶ And a review of the Forest Service’s new statements confirms the need for such an evaluation. According to the agency’s response to comments, the Silver Branch project will “present[] an opportunity for hikers to view a public working landscape that is fulfilling the agency’s direction of multiple use management by balancing forest management, economic, and recreational needs.”¹³⁷ In other words, the experience of hikers on the North Country Trail would be marred by the sight of logging operations. The Forest Service must address this in its EIS.

Remote Habitat Areas. In our comments, we noted that the Silver Branch assessment disregards the Ottawa’s obligation to manage the 256,000-acre “Remote Habitat Area” to “provide habitat for species that require some degree of remoteness from human activity, including gray wolf, American marten, goshawk, red-shouldered hawk and others.”¹³⁸ In response, the agency has asserted that the core requirement for the area—“maintain[ing] an average, open road density ... of less than or equal to 1 mile of road open to passenger vehicles (2- and 4-wheel drive) per square mile of National Forest System land (<1 mi/mi²)”—would be satisfied because, “[w]ithin the [Silver Branch project] area, there are 5 miles of proposed road construction within the RHA compared to 40.9 miles of roads that would be decommissioned. This would result in a decrease in miles open to passenger vehicles

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *See* 42 U.S.C. § 4332(2)(C).

¹³⁵ Coalition Comments at 21; Response to Comments at 17.

¹³⁶ *See, e.g.,* Revised Silver Branch EA at 17, 31, 32–33, 40 (identifying proposed trail work without evaluating the project’s potential impacts on the trail and its users).

¹³⁷ Response to Comments at 17.

¹³⁸ Coalition Comments at 21–22 (quoting Ottawa Forest Plan at 2-9).

within the RHA.”¹³⁹ This argument’s inadequate in a number of respects. First, the Forest Service has provided no data to support its calculations, leaving the public unable to assess their accuracy.¹⁴⁰ Second, the agency has failed to disclose what the average road density would be in the Remote Habitat Area following the completion of the proposed project—an essential fact in assessing the Ottawa’s compliance with the forest plan’s requirements.¹⁴¹ And finally, the Forest Service has provided no basis for its suggestion that new road construction can be allowed within the Remote Habitat Area whenever it is offset by road decommissioning—even if, as might be the case here, the average road density remains too high.¹⁴² The agency must remedy these failures before authorizing the road construction at issue.

Succession. In our comments, finally, we noted that “recent research has confirmed the significant ecological benefits that come from letting forests mature into old growth and other successional communities[,]” and “the significant ecological costs that result from logging and other forms of active management.”¹⁴³ Rather than addressing this research, as requested and required, the Forest Service’s responses again disregard it—focusing, instead, on the agency’s multiple-use mandate and existing logging limits.¹⁴⁴ The agency’s effort to ignore relevant science is irreconcilable with NEPA’s requirements.

Remedy. As demonstrated above, the Forest Service has yet to address the many arbitrary and unlawful shortcomings of its environmental assessment. In order to comply with NEPA, it must prepare a thorough environmental impact statement addressing all relevant effects—including those outlined above—before making a final decision on the Silver Branch project.

III. In preparing its environmental impact statement, the Forest Service must also consider a reasonable range of alternatives that include additional resource protections.

Of the Forest Service’s omissions in preparing its environmental review and response to comments, the most striking—and consequential—is the agency’s complete failure to address a reasonable range of alternatives to the proposed Silver Branch project. “Under NEPA,” again, “an agency’s environmental review must consider ‘a reasonable range of alternatives ... that are technically and economically

¹³⁹ Response to Comments at 30.

¹⁴⁰ *See id.*

¹⁴¹ *See id.*

¹⁴² *See id.*

¹⁴³ Coalition Comments at 22.

¹⁴⁴ Response to Comments at 25.

feasible, and meet the purpose and need of the proposal[.]”¹⁴⁵ “These options have to include ‘appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources[.]’”¹⁴⁶

The full scope of NEPA’s alternatives requirement was detailed in the Council on Environmental Quality regulations that the Forest Service purportedly relied upon in preparing its inadequate environmental review.¹⁴⁷ According to the rules, an agency’s “alternatives section should identify the reasonably foreseeable environmental effects of the proposed action and the alternatives in comparative form[,] ... sharply defin[ing] the issues for the decision maker and the public and provide a clear basis for choice among options.”¹⁴⁸ To do this, an agency must:

- (a) *Rigorously explore and objectively evaluate reasonable alternatives to the proposed action*, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination. The agency need not consider every conceivable alternative to a proposed action; rather, it shall consider a *reasonable range of alternatives that will foster informed decision making*. Agencies also may include reasonable alternatives not within the jurisdiction of the lead agency.
- (b) *Discuss each alternative considered in detail*, including the proposed action, so that reviewers may evaluate their comparative merits.
- (c) *Include the no action alternative*.
- (d) *Identify the agency’s preferred alternative or alternatives*, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

¹⁴⁵ Coalition Comments at 22 (quoting 42 U.S.C. § 4332(2)(C)(iii)).

¹⁴⁶ *Id.* (quoting 42 U.S.C. § 4332(2)(H)).

¹⁴⁷ 40 C.F.R. § 1502.14. *See also* Response to Comments at 28 (stating that “[t]he project’s analysis was conducted using the [Council’s] implementing regulations for NEPA at 40 CFR 1501.3”); Revised Silver Branch EA at 53 (referencing the Council’s regulation at 40 C.F.R. § 1501.3).

¹⁴⁸ 40 C.F.R. § 1502.14.

- (e) *Include appropriate mitigation measures* not already included in the proposed action or alternatives.
- (f) *Identify the environmentally preferable alternative* or alternatives amongst the alternatives considered in the environmental impact statement. The environmentally preferable alternative will best promote the national environmental policy expressed in section 101 of NEPA by maximizing environmental benefits, such as addressing climate change-related effects or disproportionate and adverse effects on communities with environmental justice concerns; protecting, preserving, or enhancing historic, cultural, Tribal, and natural resources, including rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders; or causing the least damage to the biological and physical environment. The environmentally preferable alternative may be the proposed action, the no action alternative, or a reasonable alternative.¹⁴⁹

These requirements are directed, of course, at environmental impact statements—the very kind of review the Forest Service needs to prepare for the Silver Branch project.¹⁵⁰ But the Council’s regulations also make clear that environmental assessments must address “[a]lternatives as required by section 102(2)(H) of NEPA[.]”¹⁵¹

As we previously explained, the Forest Service’s assessment failed to fulfill these requirements.¹⁵² In the words of our comments:

During scoping, the Keep the U.P. Wild coalition alerted the Forest Service to a significant conflict regarding the Silver Branch project and the extensive logging it would allow. The coalition also suggested a modestly modified alternative that would have addressed this conflict by protecting one of the Ottawa’s most cherished resources: the proposed Sturgeon River Gorge Wilderness Area addition, which lies at the northeastern edge of the project area and merits designation as wilderness. The Forest

¹⁴⁹ 40 C.F.R. § 1502.14(a)–(f) (emphasis added).

¹⁵⁰ *Id.*

¹⁵¹ *Id.* § 1501.5(c)(2)(ii).

¹⁵² Coalition Comments at 22–25.

Service rejected this possibility out of hand, choosing to dedicate its entire assessment to a single action alternative: a 177,772-acre project that would authorize significant logging up to the very edge of the forest's existing wilderness area.

...

As a result of its binary, 177,772-acres-or-nothing approach, the assessment has arbitrarily obscured the availability of better tailored alternatives that would protect some of the Ottawa's most cherished resources while also advancing the Forest Service's stated purpose and need. The agency must not repeat this error in its environmental impact statement. The EIS should accordingly consider a range of feasible alternatives "that would resolve conflicts about the [Silver Branch] proposal." These must include an alternative that would prohibit logging within the Sturgeon River Gorge Wilderness Area addition, as proposed by Keep the U.P. Wild. The Forest Service should also evaluate options that would permit more of the forest's maturing stands to "naturally transition" into old growth and "other forest communities"—allowing more of the Ottawa to reclaim the ecological structure and processes that sustained it for thousands of years. And the agency should consider alternatives that would provide targeted protections for the Ottawa's most vulnerable resources, including sensitive species and habitats.¹⁵³

Rather than addressing these detailed comments and its legal obligation to consider a reasonable range of alternatives, the Forest Service has elected to say nothing at all. In its response to comments, the agency has made no attempt to defend its failure to consider more environmentally protective proposals. This isn't surprising, given the Forest Service's clear obligation to do so under NEPA. In order to comply with the law's requirements—and to ensure the Ottawa's vital resources are adequately protected—the agency must prepare an environmental impact statement addressing a reasonable range of alternatives now.¹⁵⁴

¹⁵³ *Id.* at 23–25.

¹⁵⁴ 42 U.S.C. §§ 4332(2)(C)(iii), (2)(H).

IV. The Silver Branch project’s extensive logging would defy the requirements of the Ottawa National Forest’s management plan and the National Forest Management Act.

In our comments, we noted that the Silver Branch project would “authorize logging on more than 30,000 acres” of land the Ottawa National Forest has deemed “not suited for timber production”—a violation of the Ottawa’s forest plan and the National Forest Management Act.¹⁵⁵ In response, the Forest Service has declared that the logging it’s proposed on not-suitable lands wouldn’t be a problem at all.¹⁵⁶ In the words of the agency:

The suitable land base on the Ottawa includes lands designated as “Suited for timber Production” and “tentatively suited for timber production” [but] these are not the only classes that can support logging. We are not proposing timber production in “Unsuitable for Timber production[.]” ... Not suitable for timber production does not prohibit timber activities, it just restricts the idea that timber is the sole purpose for the activity. There are many times where habitat improvement activities result in the removal of trees, such as aspen for ruffed grouse and white tail deer, snowshoe hare, black bear, American woodcock, and golden wing warbler to name a few.¹⁵⁷

This argument reduces the Ottawa’s not-suitable protections to a nullity, allowing the Forest Service to push forward with logging across tens of thousands of acres of unsuitable lands with nothing more than a declaration that “timber is [not] the sole purpose for the activity.”¹⁵⁸ To ensure that the requirements of NFMA and the Ottawa’s forest plan are satisfied, the agency must prepare and release a stand-by-stand analysis demonstrating that all of the logging proposed on unsuitable lands will serve a legitimate, not-timber purpose.

¹⁵⁵ Coalition Comments at 26–28 (citing 16 U.S.C. § 1604(i); Ottawa National Forest, Record of Decision: Final Environmental Impact Statement to Accompany the Land and Resource Management Plan (Mar. 2006), at 8; Ottawa National Forest, Final Environmental Impact Statement to accompany the Land and Resource Management Plan (Mar. 2006), at A-13–A-15, A-19–A-20).

¹⁵⁶ Response to Comments at 47.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

V. The Forest Service’s failure to initiate formal consultation regarding the Silver Branch project’s impacts on gray wolves was arbitrary and unlawful under the Endangered Species Act.

In our comments, finally, we noted that the Forest Service’s biological assessment arbitrarily discounted the impacts of the Silver Branch project on the region’s endangered wolves based on the species’ “ability to move away from [the] disturbance” caused by logging, prescribed fires, and roads, “and the existence of large areas of deferred and undisturbed habitat within and around the project boundary.”¹⁵⁹ As we explained in detail:

In attempting to rely on the availability of secure wolf habitat “within and around” the Silver Branch project, the Forest Service gave little consideration to the many disruptive activities that are already underway on those lands. Elsewhere in its biological assessment, for example, the agency acknowledges that there are “[p]rojects adjacent to Silver Branch that may impact” species, like wolves, “with relatively large home ranges[,]” including “the Mud Lake VMP, Sun Lake VMP, Aspen VMP, Drumloid VMP, Tepee VMP, Kitchie-TwoRiver/Bluff Divide VMP, Baraga 2 VMP, Pricket VMP, Rousseau East VMP, and Red Pine VMP.” But the Service failed to evaluate where these projects are located, what they will involve, and how those activities could affect the ability of wolves to seek refuge from the Silver Branch project. The agency did even less when it came to the activities that are likely on the region’s private lands. According to the biological assessment, “[m]ost privately owned parcels [in the area] are residences and land used for recreation and timber harvests[,]” and “[t]ypical harvesting methods and cutting cycles by private owners are similar” to those used by the Forest Service. While this should have prompted an effort to determine what logging activities are currently planned or underway, the biological assessment punted, stating that “private land harvesting is only speculation at this time and the Forest does not know of any activities that are reasonably certain to occur on non-federal lands that will affect ... wolf habitat or distribution.” The Endangered Species Act required much more than this. In order to “insure” the Silver Branch project “is not likely to jeopardize” the Ottawa’s wolves, the Forest Service must initiate formal

¹⁵⁹ Coalition Comments at 28–31 (quoting Silver Branch BA at 16).

consultation with the Fish and Wildlife Service and give serious consideration to the cumulative impacts of logging and other activities across the region.¹⁶⁰

Rather than initiating the required consultation, the Forest Service has attempted to argue that its wolf problem was just the result of another “error” it has now corrected.¹⁶¹ According to the agency:

After further review of the BA by FS and USFWS staff, it has been determined there was an error in analysis within the gray wolf section of the BA. The specific error referred to a net increase in motorized use as compared to an actual decrease in motorized use in the project area. The BA has been revised to reflect the actual conditions and has been analyzed accordingly.¹⁶²

There are a number of problems with this argument. First, it arbitrarily disregards the fact that motorized use isn’t the only threat wolves would face as a result of the Silver Branch project, given that “timber harvest and prescribed fire activities would [also] result in short-term displacement [of endangered wolves] from harvest operations.”¹⁶³ Second, it again ignores the many disruptive activities that are already occurring “within and around the project boundary”—activities that must be acknowledged and evaluated in order to understand the project’s ultimate impacts on the region’s wolves.¹⁶⁴ Third, it relies on a revised biological assessment that has not been made available to the public for review and comment.¹⁶⁵ And finally, it gives no indication that the U.S. Fish and Wildlife Service has itself had a chance to review and approve the Forest Service’s revised assessment—a clear violation of the Endangered Species Act and FWS’s regulations.¹⁶⁶

The Forest Service does no better in addressing the incorrect answer it gave to a key question in the Fish and Wildlife Service’s “qualification interview.” As we

¹⁶⁰ *Id.*

¹⁶¹ Response to Comments at 8.

¹⁶² *Id.*

¹⁶³ Coalition Comments at 29 (quoting Silver Branch BA at 15).

¹⁶⁴ *See id.* (quoting Silver Branch BA at 16).

¹⁶⁵ Response to Comments at 8.

¹⁶⁶ *See* 50 C.F.R. § 402.12(j) (noting that an agency must “submit the completed biological assessment to the Director for review[,]” and “[t]he Director will respond in writing within 30 days as to whether or not he concurs with the findings of the biological assessment”).

noted in our comments, “[i]n submitting the project for FWS’s review, the Forest Service answered ‘No’—falsely—“when asked if the action involves ‘the approval of a long-term (i.e., in effect greater than 10 years) permit, plan, or other action[.]’”¹⁶⁷ Rather than acknowledging and correcting this error, the Forest Service has attempted to argue that it wasn’t an error at all, given two of the examples FWS had included with the question: a “large-scale land management plan,” and “other kinds of documents that provide direction for projects or actions that may be conducted over a long term (>10 years) without the need for additional section 7 consultation.”¹⁶⁸ According to the Forest Service, “[l]arge-scale management plan refers to a document that would be consistent with a Forest Plan, not a vegetation management project” like Silver Branch.¹⁶⁹ And with respect to actions that wouldn’t require consultation in the future, the Forest Service declares that it would be “required by law to reinitiate consultation” in the case of new information or excessive take “pursuant to 16 U.S.C. § 1531(a)(2); 50 C.F.R § 402.402.16(a).”¹⁷⁰

The Forest Service’s arguments are meritless. First, the agency does not (and could not) dispute that the Silver Branch project would be a “long-term (i.e., in effect greater than 10 years) ... action[.]” placing it squarely within the plain language of the Fish and Wildlife Service’s actual question.¹⁷¹ The fact that the Silver Branch project isn’t a “large-scale land management plan” does nothing to change this, as FWS’s “*example[s]*” of qualifying actions are nothing more than that.¹⁷² Second, the limited and unlikely prospect of reinitiation—which applies to every action subject to the ESA’s consultation requirements—by no means amounts to a “need for additional section 7 consultation[.]” as the Forest Service suggests.¹⁷³

In short, the Forest Service’s responses have failed to remedy its violations of the Endangered Species Act. The agency must accordingly initiate formal consultation regarding the Silver Branch project before moving forward.

¹⁶⁷ Coalition Comments at 30 (quoting U.S. Fish and Wildlife Service Michigan Ecological Services Field Office, Technical Assistance Letter for Ottawa NF Silver Branch Vegetation Management Project (Oct. 21, 2025), at 9 (Qualification Interview Question 3)).

¹⁶⁸ Response to Comments at 7 (quoting Qualification Interview Question 3).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Qualification Interview Question 3.

¹⁷² *Id.* (emphasis added).

¹⁷³ Response to Comments at 7 (quoting Qualification Interview Question 3).

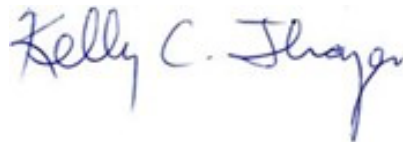
VI. Conclusion

The Silver Branch project would have significant and unlawful effects on the lands and wildlife of the Ottawa National Forest. As we explained in our earlier comments, the Forest Service must accordingly prepare an environmental impact statement evaluating lawful alternatives that would better protect the forest's extraordinary resources. We would welcome the opportunity to meet with the agency regarding the objections we've set out above—and to work with the agency as it designs new alternatives and prepares an EIS.

Sincerely,



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